

Date: 19970911
Docket: S0006556
Registry: Chilliwack

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRINITY WESTERN UNIVERSITY and DONNA GAIL LINDQUIST

PETITIONERS

AND:

THE BRITISH COLUMBIA COLLEGE OF TEACHERS

RESPONDENT

AND:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
and CATHOLIC CIVIL RIGHTS LEAGUE

INTERVENORS

REASONS FOR JUDGMENT
OF THE
HONOURABLE MR. JUSTICE W.H. DAVIES

Counsel for the Petitioners: R.G. Kuhn & K.G. Sawatsky

Counsel for the Respondent: T.R. Berger, Q.C. & E.F. Berger

Counsel for British Columbia
Civil Liberties Association: T. Delaney
(Intervenor)

Counsel for the Catholic
Civil Rights League: E. Phillips & J. Owen
(Intervenor)

Place and Dates of Hearing: Chilliwack, B.C.
May 5-9, 1997 INTRODUCTION

[1] The petitioners apply for judicial review of the decision of the Council of the British Columbia College of Teachers (BCCT) denying the application of the petitioner, Trinity Western University (TWU) for approval of its teacher education program.

[2] TWU is a fully-accredited private university founded on religious principles. It requires all students seeking admission to agree to a code of conduct which includes an obligation to refrain from "homosexual behaviour". TWU applied to the BCCT for accreditation of its teacher education programs. Its application was evaluated by the Teacher Education Programs Committee of the BCCT. The evaluation was apparently conducted according to the criteria established by the BCCT which included considerations relating to the ability of graduates to teach effectively in a multicultural and pluralistic society. The Committee recommended to the Council that TWU be accredited for a five year interim period subject to certain conditions.

[3] On May 17, 1996, the Council rejected TWU's application. TWU requested a review of this decision which was heard by the Council June 29, 1996. The application was again rejected. The reason for the rejection given by Council was that it believed that "the proposed program follows discriminatory practices which are contrary to the public interest and public policy".

[4] The position taken by the BCCT is that because TWU's code of conduct includes a denunciation of homosexual behaviour, the Council is "entitled to anticipate" that graduates may well be biased in dealing with homosexual students. No evidence was offered to support this conclusion.

[5] The petitioners seek an order in the nature of certiorari quashing the decision of the Council of the BCCT and deciding the issue in favour of TWU, or, in the alternative, an order in the nature of mandamus directing the Council of the BCCT to approve the application of TWU for the accreditation of its Teacher Education Program.

FACTS

THE PARTIES

Trinity Western University

[6] TWU is a liberal arts university located in Langley, British Columbia. It has an enrollment of approximately 2500 students and has 350 faculty and staff.

[7] It is a fully accredited member of the Association of Universities and Colleges of Canada, which means that its degree programs are recognized throughout Canada. Those degree programs include a Bachelor of Education program.

[8] TWU was founded by the Evangelical Free Church and the ties remain close: a majority of the university's board is appointed by that Church. TWU's primary focus is to serve the needs of members of the Evangelical Free Church and other Protestant Christian groups broadly categorized as evangelical, although others, including non-Christians, are admitted.

[9] TWU was founded as Trinity Junior College in 1962. In 1969, it was granted a provincial charter by the Trinity Junior College Act, SBC 1969, c44. Section 3(2) of that Act stated:

The objects of the College shall be to provide for young people of any race, colour or creed the first two years of university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian and to assist students to transfer to senior colleges and universities.

[10] In 1979, the college's charter was changed to allow it to grant undergraduate degrees and to alter the name to Trinity Western College. In 1985, the provincial legislature again amended the college's charter, giving it the authority to grant graduate degrees and altering its name to Trinity Western University.

[11] At present, TWU offers the following degrees:

- a. Bachelor of Arts;
- b. Bachelor of Business Administration;
- c. Bachelor of Education;
- d. Bachelor of Science;
- e. Bachelor of Science in Nursing;
- f. Master of Arts in Counselling (Psychology); and
- g. Masters degrees in Religious Studies and Theology.

[12] All faculty members are required annually to endorse a twelve-point statement of faith approved by the Evangelical Free Church of Canada. Within this statement of faith is the declaration that TWU "is committed to academic freedom in teaching and investigation".

[13] The members of the TWU "community" - students and faculty - are expected to live by a set of Community Standards. These, as they stood in April 1995 when they were forwarded to the Program Approval Team, are as follows:

RESPONSIBILITIES OF MEMBERSHIP IN THE COMMUNITY OF TRINITY WESTERN UNIVERSITY

PREAMBLE

Trinity Western is a Christian university distinguished by a clear mission:

The mission of Trinity Western University, as an arm of the church, is to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Jesus Christ who glorify God through fulfilling The Great Commission,

serving God and people in the various marketplaces of life.

CORE VALUES

The Community Standards reflect our University's core values and help preserve its distinctly Christian character. Members of the community rightly expect each other to behave in accordance with these:

- * THE INSPIRATION AND AUTHORITY OF THE BIBLE Members of the community voluntarily submit to its teaching.
- * THE PURSUIT OF PERSONAL HOLINESS Members of the community strive to live distinctly Christian lives.
- * THE UNIVERSITY'S MISSION Members of the community are determined to let nothing stand in the way of becoming "godly Christian leaders."
- * THE COMMUNITY Members of the community place the welfare of the community above their personal preferences.

THE COMMUNITY STANDARDS

Because the Community Standards are intended to reflect a preferred lifestyle for those who belong to this community rather than "campus rules," they apply both on and off campus. All members of the community are responsible to:

- * CONDUCT THEMSELVES AS RESPONSIBLE CITIZENS.
- * ENGAGE IN AN HONEST PURSUIT OF BIBLICAL HOLINESS.
- * MAKE THE UNIVERSITY'S MISSION THEIR OWN MISSION.
- * LIMIT THE EXERCISE OF THEIR CHRISTIAN LIBERTY IN ACCORDANCE WITH THE UNIVERSITY'S MISSION AND THE BEST INTEREST OF OTHER MEMBERS OF THE COMMUNITY.

APPLICATION OF THE COMMUNITY STANDARDS TO STUDENTS

It is recognized that not every student will have personal convictions wholly in accord with the following application of these standards. However, all students are responsible to:

- * OBEY THE LAW AND CONDUCT THEMSELVES AS RESPONSIBLE CITIZENS WHO CONTRIBUTE TO THE WELFARE OF THE GREATER COMMUNITY (Rom. 13:1-7). Among other things, this precludes the use of marijuana and drugs for non-medical purposes and conduct that disrupts classes or the general operation of the University. It also includes demonstrating respect for the property of others and of the University.

- * OBEY JESUS COMMANDMENT TO HIS DISCIPLES (Jn. 13:34-35) ECHOED BY THE APOSTLE PAUL (Rom. 14; 1 Cor. 8, 13) TO LOVE ONE ANOTHER. In general this involves showing respect for all people regardless of race or gender and regard for human life at all stages. It includes making a habit of edifying others, showing compassion, demonstrating unselfishness, and displaying patience.

- *REFRAIN FROM PRACTICES THAT ARE BIBLICALLY CONDEMNED. These include but are not limited to drunkenness (Eph. 5:18), swearing or use of profane language (Eph. 4:29, 5:4; Jas 3:1-12), harassment (Jn 13:34-35; Rom. 12:9-21; Eph.4:31), all forms of dishonesty including cheating and stealing (Prov. 12:22; Col. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including viewing of pornography, premarital sex, adultery, and homosexual behaviour (I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27 [sic: actually Rom 1:26-27]; I Tim. 1:9-10). Furthermore married members of the community agree to maintain the sanctity of marriage and to take every positive step possible to avoid divorce.

* EXERCISE CAREFUL JUDGMENT IN THE EXERCISE OF PERSONAL FREEDOM (Gal. 5:16-6:10; Rom. 12:1-15:13; I Cor. 8:9-13; 13:1-13; Eph. 4:17-6:18; Col. 3:1-4:6; I Thess. 4:1-5:24). This entails the responsible use of time and material resources, and the honest pursuit of knowledge including regular attendance at classes, chapel services, and University events. It also requires that members of the community abstain from the use or possession of alcoholic beverages, tobacco in any form, other forms of substance abuse, all forms of gambling, and that members of the community maintain modest, inoffensive behaviour in personal relationships. Co-ed living arrangements are not suitable for unmarried Trinity students. Furthermore because many contemporary forms of amusement are of questionable value or diminish one's moral sensitivities, members of the community are to use discernment in their choice of entertainment including television, movies, live productions, and social dancing. Keep in mind that social dancing is not permitted on campus, neither may dances be sponsored by University or student groups. Furthermore, the University does not condone dancing at clubs where alcohol is liberally consumed, discretion in the choice of music is not exercised, and the overall atmosphere is questionable.

...

[14] The Community Standards are presented to the students as a code of conduct. Unlike the faculty, students may have any beliefs as long as they are willing to promise to adhere to the code of conduct while at TWU. This is made clear in the information provided to students with the Community Standards:

Reality Check: You are at Trinity Western University. This is not AGU (Anything Goes University), or UIG (University of Instant Gratification) or DAYPU (Do As You Please University). We just wanted to make sure you know where you are. ...

When you decided to attend TWU you signed on to live by different standards than the rest of the world does. ...

You might not absolutely agree with the Standards. They might not be consistent with what you believe. However, when you decided to come to TWU, you agreed to accept these responsibilities. If you cannot support and abide by them, then perhaps you should look into UIG or AGU.

Donna Lindquist

[15] Donna Lindquist is a student in the education program at TWU. At the time that the judicial review was heard, she was twenty years old and was in her third year at TWU. She voluntarily signed TWU's Community Standards on 4 September 1996.

BC College of Teachers

[16] The Teaching Profession Act, SBC 1987, c19, now RSBC 1996, c449, established the BCCT as the governing body of the teaching profession in the province. The objects of the BCCT are set out in s.4 of the Act:

4. It is the object of the college to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership and, consistent with that object, to encourage the professional interest of its members in those matters.

[17] To be a member of the BCCT and participate in the governance of the profession, one must hold a certificate of qualification issued by the BCCT. However, not all teachers

holding certificates need be members.

[18] The Council of the BCCT, responsible for the governance of the teaching profession, consists of 20 individuals: 15 elected by the members and five appointees.

[19] Section 21 of the Act sets out the general powers of the Council, including:

21 Subject to this Act, the council must govern and administer the affairs of the college and, without limiting that duty, the council may do the following:

(i) approve, for certification purposes, the program of any established faculty of teacher education or school of teacher education.

[20] The bylaw-making powers of the Council are set out in s.23, the relevant portions of which are:

23 (1) The council may make bylaws consistent with this Act and the School Act as follows:

(d) respecting the training and qualifications of teachers and establishing standards, policies and procedures with respect to the training and qualifications including, but not limited to, professional, academic and specialist standards, policies and procedures;

(e) respecting the issue of certificates of qualification and classifying certificates of qualification into one or more types;

(f) respecting the standards of fitness for the admission of persons as members of the college;

[21] Under section 27 of the Act, a teacher education programs committee must be appointed. This section provides, in full:

27 (1) The council must appoint 2 council members as the chair and vice chair of a teacher education programs committee.

(2) All members of the council are entitled to sit on the teacher education programs committee.

(3) The quorum of the teacher education programs committee is 3 members.

(4) The teacher education programs committee may

(a) cooperate with teacher education institutions in the design and evaluation of teacher education programs leading to certification by the college, and

(b) in cooperation with the qualifications and discipline committees, develop specific programs to assist individual teachers.

[22] The BCCT enacted Bylaw 5.C. Teacher Education Programs Committee - Approval of Teacher Education Programs. This bylaw provided, in full:

5.C.01 Pursuant to the Teaching Profession Act, the Council of the College may approve for certification purposes the teacher education programs or revision to the programs of the Faculties of Education at universities recognized by statute in British Columbia as degree granting institutions.

5.C.02 The Council shall establish criteria for the approval for certification purposes of teacher education programs.

5.C.03 For existing teacher education programs

that meet or are working towards meeting the criteria for approval established under Bylaw 5.C.02, approval may be granted on a continuing basis on the recommendation of the Teacher Education Programs Committee.

5.C.04 The Council may from time to time review the teacher education programs of Faculties of Education approved under Bylaw 5.C.03.

5.C.05 For new teacher education programs offered by institutions recognized by statute in British Columbia as degree granting institutions, approval may be granted on an interim basis of a maximum of five years and will be based on:

(a) the criteria for approval established under Bylaw 5.C.02;

(b) the recommendation of the Teacher Education Programs Committee following a review process.

[23] The BCCT also promulgated policies. Policy 5.C is entitled Approval of Teacher Education Programs. P5.C.03 deals with the process for the approval of new teacher education programs. P5.C.01 is entitled Criteria for the Approval for Certification Purposes of Teacher Education Programs. It provides:

(a) The College believes that:

1. a major goal of pre-certification programs is the preparation of teachers ready to engage in reflective practice and committed to continued professional growth.

2. a collaborative approach is essential to the well-being and improvement of teacher education.

3. teacher education is best served by recognized institutions offering:

- (a) distinctive programs,
- (b) alternative approaches within the general framework of those programs.

4. pre-certification teacher education programs must be a central priority of the work of Faculties of Education.

5. the quality of instruction demonstrated by those engaged in teacher education programs - faculty, seconded practitioners and sponsor teachers - is of paramount importance.

6. faculties of education and the wider education system have a responsibility to respond to the changing needs of society by recognizing areas of study such as multiculturalism, native studies, women's studies and special education.

7. there is value in offering teacher education programs which have been approved for certification purposes, at various locations throughout the province.

8. potential changes in the operation of schools, for example the integration of subject areas and the restructuring of grade levels, may dictate significant revision in some of the criteria outlined for program approval.

(b) Programs must meet the following criteria:

1.0 Context

1.1 Have an appropriate institutional setting in terms of depth and breadth of personnel, research and other scholarly activity and commitment to teacher education.

2.0 Selection

2.0 Have defined selection and admission policy that recognizes the importance of academic standing, interest in working with young people and suitability for entrance into the profession of teaching.

3.0 Content

3.1 Have content which provides a base of knowledge of sufficient breadth and depth to prepare the candidate for an appropriate teaching assignment in the school system. This shall include:

(a) For standard certification, a minimum of 78 credit/semester hours, with at least 18 credit/semester hours of course work at the senior level, taken outside the Faculty of Education and related to the curriculum of B.C. schools, or

(b) For professional certification, an acceptable degree as defined by P2.B.03, or

(c) As an alternative to 3.1(a) or 3.1(b), an appropriate combination of academic and/or specialist course work on a program, consistent with Bylaw 2.B, recommended by the Faculty of Education and approved by the College prior to inception of the program.

(d) At least six (6) credit/semester hours of English Literature and Composition.

3.2 Have content which provides for a minimum of 36 credit/semester hours of professional education and pedagogical course work. This must include a minimum of 12 weeks of supervised student teaching, the major part of which normally must be undertaken in public schools. The program should recognize the advantages of an extended practicum in one school.

3.3 Have content which proves a base of pedagogical knowledge informed by current research.

3.4 Have content which provides a base of pedagogical skills that is informed by principles of effective practice and current research.

3.5 Have content which recognizes the diverse nature of our society and which addresses throughout the program philosophical, ethical, and societal concerns with specific attention to the following areas:

- 3.5.1 English as a Second Language (ESL)
- 3.5.2 First Nations Issues
- 3.5.3 Gender Equity
- 3.5.4 Multiculturalism and Racism
- 3.5.5 Students with Special Needs

3.6 Have content which provides a base of knowledge about the administrative, legal and political framework within which teachers work.

3.7 Have content which provides for inquiry and dialogue regarding the ethics, standards and practices of teaching as a profession.

4.0 Integration of Theory and Practice

4.1 Integrates theory and practice in all major areas of the program - the practicum, educational studies, and pedagogical knowledge and skills - to encourage the development of reflective practice.

4.2 Recognizes that reflective practice will be encouraged by programs in which the structure and nature allow time and opportunity to reflect.

4.3 Recognizes that the integration of theory and

practice is enhanced by:

4.3.1 Valuing good teaching and the appropriate modelling of teaching methodologies.

4.3.2 Ensuring that those who teach pedagogical skills and supervise practica have recent experience or significant involvement in school classrooms.

4.3.3 Encouraging the development of educational theories and research grounded in professional practice.

5.0 Program Review

5.1 Have a process for continuing review of its teacher education program in order that it can initiate changes or respond appropriately to changes arising from curricular, research, societal, and government policy directions.

[24] The effect of accreditation, or approval for certification purposes, is that every graduate of the approved program is certified by the BCCT. Without this approval, Trinity Western could still run a free-standing education program with a recognized Bachelor of Education degree, but its graduates would have to apply individually for certification by the BCCT.

[25] The BCCT is controlled by its members, who must all be certified teachers. However, even if a person is competent to be certified as a teacher, the BCCT may only admit that teacher to membership if it further decides that the teacher "is of good moral character and is otherwise fit and proper to be granted membership". This is set out in s.25(1)(a) and (b) of the Act.

25 (1) The college must not do any of the following:

(a) issue a certificate of qualification to a person unless the person has met the relevant standards established by bylaw under section 23;

(b) admit a person as a member unless the person

(i) meets the standards of qualifications and the standards of fitness established by bylaw under section 23, and

(ii) satisfies the council that the person is of good moral character and is otherwise fit and proper to be granted membership;

[26] The BCCT is not a true licensing body such as the Law Society, for one can call oneself a teacher and work as a teacher with no certification. Nevertheless certification as a teacher by the BCCT is important.

[27] Counsel for the BCCT argued that the denial of certification by the BCCT, did not really hurt the ability of TWU graduates to work in their chosen profession because although they would be unable to teach in public schools they could teach in independent schools. However, this argument ignores the requirements of the Independent School Act, RSBC 1996, c216. For those schools regulated under that Act, certification by the BCCT is one of three ways to become a "certified teacher" under the Independent School Act. Section 1(1) of that Act defines "certified teacher" as:

"certified teacher" means a teacher

(a) who holds a certificate of qualification under the Teaching Profession Act,

(b) who holds a certificate of qualification issued by the inspector under this Act or the former Act, or

(c) with respect to whom a letter of permission has been issued to an authority by the inspector;

[28] The basis for the inspector's decision to grant a certificate of qualification is set out in the Independent Schools Certification Guidelines. These guidelines require teachers who wish to be certified to teach in an independent school and who are not certified by the BCCT to complete "one year of recognized teacher training", which means "training of persons to be teachers, which has earned provincial, state or national certification in the province, state or country where the training takes place". Otherwise, the teacher will be allowed to teach only in those areas directly related to the teacher's degree program.

[29] Independent schools are divided into several groups. Under ss.3 and 4 of the Schedule to the Independent School Act, schools in groups 1 and 2 must employ none but certified teachers. Under s.6 of the Schedule, 80% of the teachers employed by group 4 schools must be certified teachers. Group 1 and 2 schools, which must be non-profit, receive provincial grants of 50% and 35%, respectively, of the per-pupil grant to public schools. Group 4 schools, which may be for-profit, cater mainly to out-of-province students.

[30] Schools in groups 1, 2, and 4 may state that they are "certified by the Province of British Columbia" and may receive provincial assessment and examination results. Further, all group 1 and 2 schools and those group 4 schools whose teachers are all certified may issue the British Columbia certificate of graduation. Group 3 schools, which can employ uncertified teachers, may do none of these things.

[31] The effect then of the Act is that if TWU's program is not accredited, TWU graduates will likely find it difficult to teach in this province.

BC Civil Liberties Association

[32] The BCCLA is an intervenor in these proceedings.

Catholic Civil Rights League

[33] The second intervenor is the BC Chapter of the Catholic Civil Rights League (the CCRL). This organization is composed of lay Roman Catholics and "is dedicated to the orthodox expression of the faith in the public affairs of Canada for the common good."

[34] Approximately 18% of the population of British Columbia reported their religion as Roman Catholic in the 1991 census and there are approximately 14,000 students in 47 Catholic schools employing 800 teachers in the Archdiocese of Vancouver. These schools are group 1 independent schools, entitled to a per-pupil government grant of 50% of the per-pupil grant to public schools.

THE CURRENT EDUCATION PROGRAMME AT TWU

[35] In 1985, the Ministry of Education approved a joint program between TWU and Simon Fraser University that provides for the certification of TWU education graduates to teach in British Columbia public schools. This joint program remains in place. The result of this arrangement is to make TWU's education program dependent on the co-operation of Simon Fraser University.

[36] Since 1985, TWU has been conferring three education degrees through this program:

- (a) Bachelor of Education in Elementary Education;
- (b) Bachelor of Education in Secondary Education; and
- (c) Bachelor of Arts in Elementary Education.

[37] TWU's Bachelor of Education degrees require a minimum of 157 semester hours of course credit, encompassing five years of study. Of this requirement, 38 semester hours are completed through the SFU Professional Development Program as visiting students at SFU. This includes the satisfactory completion of a student teaching practicum mentored by teachers drawn from public schools in the area.

[38] For the elementary education program, 30 of the 38 semester hours to be completed through SFU are conducted on TWU

campus. The final 8 semester hours are completed at SFU during one summer.

[39] Students are placed as volunteers in local public schools. The requests from public school teachers and principals for TWU's students consistently exceeds the supply. After graduation, approximately 70% of TWU education graduates have obtained positions to teach in public schools. A significant proportion of graduates have chosen to teach in multicultural situations, in First Nations schools, and in prison settings. There was no evidence presented which suggested there have been problems with TWU graduates dealing with pupils.

THE PROCESS

[40] In May 1987, TWU applied to the Ministry of Education for approval of a complete Professional Teacher Education Program conducted without the involvement of SFU. This was deferred initially on the basis that the BCCT, which was taking over the accreditation process in January 1988, would be better placed to make the decision. TWU sought a reconsideration of this decision. On 8 November 1987, the minister approved TWU's application for accreditation.

[41] However, when the BCCT took over, this accreditation was discontinued. In a letter to TWU dated 10 March 1988, G.W. Broadley, Chairman of the BCCT, wrote:

While the Council has given interim approval to the current teacher education programs at the University of British Columbia, the University of Victoria and Simon Fraser University, it intends to undertake a review of all of these programs. The College will not be in a position to approve additional teacher education programs until this review is complete. Meanwhile, the Council recommends that Trinity Western University continue its existing arrangement with Simon Fraser University.

[42] Six and a half years later the BCCT completed its review and its criteria. On 27 October 1994, the Council approved Guidelines for Proposals for New Teacher Education Programs. A copy of these Guidelines was forwarded to TWU by a letter dated 29 November 1994. TWU applied for approval of the Professional Teacher Education Program on 14 January 1995.

[43] TWU's application was given to the Program Approval Sub-Committee of the Teacher Education Programs Committee. On 4 April 1995, the Registrar of the BCCT wrote to TWU setting out specifically the concerns of the Program Approval Sub-Committee to be discussed at a meeting on 6 April 1995 at TWU. Eighteen issues were identified, under five headings:

A. Five-Year Development Plan/Scope and Size of Program

1. The five-year development plan showing timelines for each facet of the program. The Committee feels that expansion to a secondary program would require a separate proposal.
2. The number of students in the education program and the number of graduates anticipated each year.
3. The three proposed program routes and the number of students anticipated to follow each route.
4. The scheduling of students on the post-degree program into education courses.
5. The rationale for proposing to offer programs for the K-10 grade levels rather than proposing to offer elementary or both elementary and secondary programs.

B. Academic/Course Content Issues

6. Procedures and standards for the granting of transfer credit from other institutions to Trinity Western University, including which institutions Trinity Western considers accredited institutions.

7. What direction the review of core courses is taking and what impact it may have on the proposal.

8. Considering the size of the faculty, how the distinction between content courses and education courses will be maintained in the program.

9. The reason for the inclusion in the proposal of some minor subject areas that are not considered to be teachable subjects.

10. How social issues will be addressed throughout the program and clarification of how much of this will be addressed in required courses.

C. Resource Issues

11. How the proposed number of faculty will provide all course requirements.

12. What is meant by course "buy outs" and how these may affect the ability to offer courses.

13. The roles and qualifications of part-time and sessional instructors.

14. How the proposed budget will provide enough resources for the programs.

D. Other

15. Placement of student teachers in public or non-public schools. Trinity Western's proposal would allow students to choose to do one practicum in an independent school while the College's criteria require that the long practicum normally be done in a public school.

16. How the program will co-ordinate with other B.C. teacher education programs and what potential impact this program will have on other programs.

17. How program review will be carried out and who will be responsible for it.

E.

In addition to the issues raised in the preceding list, we feel it is necessary to raise another issue not covered in our criteria. There appears to be an inherent contradiction between the necessity to prepare teachers who are going to work with colleagues and students from diverse ethnic and value backgrounds and a program based on a common vision or world view including a requirement to abide by Trinity Western's code of conduct.

[44] These concerns were discussed at the meeting between representatives of TWU and the Sub-Committee on 6 April 1995, in particular the concerns with respect to the Community Standards Code of TWU. TWU responded to each of these concerns in detail by letter on 10 April 1995. Of particular relevance is the response to issue 10, where TWU lists the various courses that address social issues; and issue 15, where TWU states that it will follow the BCCT criterion and send its students to public schools for their long practicum.

[45] TWU also responded to the concerns noted under heading E - the Worldview Concerns. This response was in part as follows:

The reviews of public school teachers to Trinity Western education students have been positive, and evaluations of pre-PDP student volunteer experiences by public school teachers can be made available to the Program Approval Sub-Committee. Each year, we have more public schools in the Langley area spontaneously request placements of such volunteers in their schools. Also, the reaction of principals to TWU graduates hired by public school boards has been favorable. Most of these teachers took four of their five years of post-secondary education at TWU.

While Trinity Western's basis is explicitly Christian, its faculty members have academic freedom within that framework (see attached statement). Students must

subscribe to a standard of conduct while enrolled at Trinity Western so that the university can function as a learning community that upholds what it believes to be consistent with Christian values (also attached). ...

Trinity Western's student body is reasonably diverse ... The student body is ethnically diverse. While the majority of students come from homes with Protestant Christian backgrounds, TWU students do not have to subscribe to the university's statement of faith, nor are they obliged to accept any particular position in class discussions or assignments. What is emphasized, as in other post-secondary institutions, is that students must reflectively and critically evaluate evidence and draw personal conclusions about academic and social issues. Our programs stress the importance of developing rational autonomy while also pointing out that such autonomy takes place within particular philosophical frameworks. TWU's education program encourages its students to develop personal theories and orientations about schooling, learning and teaching that they can defend and justify in terms of their own basic presuppositions.

The teaching at Trinity Western is based on a Christian worldview. Professors at any and all institutions, of course, teach from certain worldview perspectives. Trinity Western instructors are open about their basic perspective but do not require students to adopt a similar one. All education courses discuss diverse educational perspectives: different philosophical and historical approaches to education; different theories of learning; different curriculum orientations; different sociological interpretations of current social and educational issues, and so on. TWU professors encourage students to analyze and evaluate these different perspectives critically as the students examine, justify, and redefine their own positions.

TWU emphasizes to prospective teachers that public schools are, by law, "secular and non-sectarian," and that they serve all segments of a pluralistic society. At the same time, TWU students become aware that education is never neutral: all education is value-based. In the required philosophy of education course, for example, students therefore consider philosopher Mary Warnock's approach to teaching values. Warnock recommends that public school teachers ask students to analyze value issues in society and then have them apply student-justified value principles to specific situations. Only afterwards, adds Warnock, may teachers indicate their own position, giving reasons but leaving it to students to draw their own conclusions. In this way teachers can discuss the importance of basic universal values on which democratic societies are founded - values such as justice, integrity, responsibility, compassion, tolerance, respect, cooperation, and responsible economic and ecological stewardship. At the same time, they remain open to different applications of such values and do not impose their own interpretations.

The values listed above are inherent constituents of a Christian worldview (as well as of other worldviews, as C.S. Lewis already documented many years ago). Historically not all persons calling themselves Christians have lived up to such ideals. Nevertheless, basic Christian values such as those listed above add a dimension to the Canadian mosaic that can strengthen the public sphere and, hence, public education. A healthy democratic, pluralistic society is not one that seeks the grey conformity of a lowest common denominator; instead, it is one where it is possible for different perspectives, including Christian ones, to contribute to the common good while respecting and learning from others. As such, we do not see TWU's proposed education program as a competitor to other teacher education programs, but an alternative that can provide a unique contribution to the B.C. education scene.

[46] On 10 May 1995, the BCCT wrote to TWU setting out the process (a Program Approval Team would be appointed) and advising of the \$10,000 fee required to initiate the approval

process for TWU's proposed program. On 12 October 1995, TWU forwarded this fee to the BCCT.

[47] On the 8th and 9th of January 1996, the Program Approval Team visited TWU. Interviews were conducted of faculty members and students. The Team raised the issue of the Community Standards Codes and discussed the worldview of students and faculty. On 21 March 1996, the BCCT forwarded a copy of the Program Approval Team's report and recommendations to TWU. This report dealt with the issue of TWU's worldview at pp.5-6:

A question the College must consider is whether the public interest is served by a teacher education faculty with the mission statement of Trinity Western. ... While there is no question of the right of teachers to their religious beliefs, the College must assure itself that graduates of a program such as that of Trinity Western can take their places in a public school system and maintain a non-sectarian position in their daily work with children. For many years teachers with strong beliefs in their faiths have been able to function in this non-sectarian way in B.C. public schools. On the other hand they were not graduates of programs in which the student's "... faith and disciplinary development are integrated - not compartmentalized." ...

On the other hand, is there any reason to believe that a teacher with this teacher education background is not able to function effectively in a non-sectarian system? ...

B.C. has many teachers who have had their initial teacher training and teaching experience elsewhere in church operated schools in which faith and discipline were integrated. They qualify for a B.C. certificate of qualification provided that academic and professional requirements are met. Different standards should not be established for persons whose initial teacher education is in B.C.

The Program Approval Team concludes that the specific nature of the Trinity Western program should not be an impediment to it being approved for certification purposes. At the same time, the team believes that the program needs to be carefully monitored to ensure that its graduates do continue to meet the needs of the B.C. public school system.

[48] The Program Approval Team recommended that TWU be accredited for a five-year interim period, subject to certain conditions: first, there should be annual monitoring of the program and the students to ensure that standards are maintained and applicants for admission are not rejected because of their worldview; second, the application for accreditation of TWU's middle school program was rejected and only the K-7 program recommended for accreditation; third, it was noted that the library was minimally adequate; fourth, to ensure a broad worldview among the faculty, associates should be seconded from the public school system and the selection process should involve a member of the BCCT.

[49] This report then went to the Teacher Education Programs Committee. On 15 May 1996, the Committee recommended to the Council that Trinity Western's program be accredited, subject to the conditions proposed by the Program Approval Team, as amended. The recommendation was as follows:

That the teacher education program proposed by Trinity Western University be approved for a 5-year interim period on the basis of the report of the program Approval Team and subject to the following conditions:

1. That the B.C. College of Teachers monitor the program annually so that the context of the program meets criterion P 5 C 01 (b) 1.1.
2. That Trinity Western University make substantial improvements to its library

resources, particularly with reference to curriculum materials.

3. That, based on the admission policy reviewed by the Program Approval Team, the B.C. College of Teachers monitor the application of admissions policy to ensure that applicants who meet the requirements are not refused admission on the basis of a differing world view or on the basis of having completed previous course work at a public university.
4. That Trinity Western University provide a program only for grades K-7.
5. That Trinity Western University select its faculty associates from the public school system, and that the selection process involve a member of the College appointed in consultation with the College.
6. That Education 365 (Social Issues in Canadian Education) be mandatory for all education students.
7. That in the final year of the interim program approval, an in-depth evaluation will be conducted by an independent external review team selected by the College in consultation with Trinity Western University.
8. The process described by Trinity Western University for the annual ongoing review of its teacher education program is implemented and includes representation from the College.

[50] On 17 May 1996, the Council of the BCCT met and rejected TWU's application. By a vote of 16 to 2, it approved the following motion:

That the application for a new teacher education program by Trinity Western University be denied because it does not fully meet the criteria and because it is contrary to the public interest to approve a teacher education program offered by a private institution which appears to follow discriminatory practices that public institutions are, by law, not allowed to follow.

[51] On 17 May 1996, TWU appealed this decision.

[52] Although no reasons were given by the Council, TWU was provided with a list of issues discussed by the Council in their deliberations by letter on 22 May 1996:

* Discriminatory practices at Trinity Western University, specifically the requirement for students to sign a contract of "Responsibilities of Membership in the Trinity Western University Community."

* The adequacy of library resources: Council members expressed the view that resources should be improved prior to the inception of the program.

* Recommendations in the report of the Program Approval Team for monitoring several aspects of the program raised doubts about the overall readiness of the program for approval.

* The suitability and preparedness of graduates to teach in the diverse and complex social environments found in the public school system.

* The difficulty of adequately monitoring the application of admissions policy to ensure that discrimination does not occur.

* The ability of the faculty to provide a program of sufficient breadth and depth.

* The limited extent of public school experience of the faculty.

* A concern that the presentation and consideration of social issues would be limited by the requirement of the program for commitment to a homogenous world view.

[53] On 14 June 1996, TWU presented a written report to the Council responding to the 17 May 1996 decision. The issues outlined to TWU in the letter of 22 May 1996 were responded to point-by-point in detailed submissions. A portion of that response was as follows:

We now want to address what we believe to be your basic objection: that an independent institution is not a suitable context to prepare teachers for the public school system. ...

It is a logical fallacy to assume that because an institution makes certain requirements of its faculty and students, it cannot therefore prepare prospective teachers for situations where such requirements are not demanded. This is akin to saying that the behavioural standards demanded of Mother Teresa's co-workers or members of the Salvation Army make them unsuitable for working in inner city situations. In the United States, a large number of institutions with community standards similar to Trinity Western's have successfully prepared hundreds of thousands of teachers for public schools, and a substantial number of their graduates already hold permanent teaching certificates issued by the B.C. College of Teachers.

There would be a problem if Trinity Western University suggested that its standards should also apply to public institutions, but this is not the case. Our record shows, as described above, that our preservice teachers and our graduates function well in public school situations. As we indicated in our April 1995 supplementary submission, Trinity Western's education faculty emphasizes to our preservice teachers that public schools, by law, are "secular and nonsectarian," and that they serve all sectors of a diverse society.

One of the first notions discussed in our philosophy of education course is the concept of tolerance. The course traces the roots of the concept of tolerance to the Protestant Reformation; it was only then that society began to recognize the importance of allowing others to hold views contrary to one's own. It is then shown that the concept of tolerance, a basic for a democratic society, can be exercised only if three conditions are met: veracity, responsibility, and compassion. ...

Why do we point this out? First, because Trinity Western University stands not only for tolerance but also for veracity, responsibility and compassion. Members of the Trinity Western community - whether faculty or students - voluntarily observe certain standards of behaviour. At the same time, TWU's position is that we must show tolerance for those who hold different points of view. It also holds that we must ensure that the basic human rights of all citizens must be respected and protected. ...

Secondly, true tolerance allows those with viewpoints that differ from one's own to function fully in a democratic society. That means that those who disagree with TWU's community standards, if they are truly tolerant, will allow Trinity Western University to operate a teacher education program. The public interest is served by distinctive programs as long as they can demonstrate academic and social veracity, responsibility and compassion. Our proposed program meets those conditions. The public interest is not served by denying the operation of responsible teacher education programs even though some may disagree with certain aspects of their philosophical basis. In the words of former U.S. Supreme Court Justice Robert Jackson:

Freedom to differ is not limited to things that do

not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

...

We believe that it is only fair that Trinity Western University receive equitable treatment. ... We point out that if the College fails to reverse its rejection of our program, our students could then decide to attend their last year of a teacher education program at an American Christian college and subsequently obtain certification in British Columbia. ...

For more than ten years, Trinity Western University has demonstrated its commitment to a responsible teacher education program. It has also demonstrated that the first four years of its program do everything required of a professional teacher education program that prepares teachers for both public and for government-certified independent schools.

THE DECISION UNDER REVIEW

[54] The appeal or reconsideration was heard by the Council on 29 June 1996. Council again rejected TWU's application. By a vote of 17 to 1, the following resolution was approved:

That Trinity Western University's appeal in regard to the College's denial of its application for approval of a Teacher Education Program be denied because Council still believes the proposed program follows discriminatory practices which are contrary to the public interest and public policy which the College must consider under its mandate as expressed in the Teaching Profession Act.

[55] In the BCCT Report to Members in the Fall of 1996, reasons were given, for the Council's decision although it is unclear whether these reasons were intended to be an official explanation or mere commentary:

Background

... The test for approval of a teacher education program may not be a special test designed for private non-secular institutions, it must be the same test the College is obliged by its mandate to apply to public, secular universities. In making a final decision not to approve the program, the Council acted carefully considering public policy and the public interest. The Council is not requiring Trinity Western to conform to views it rejects.

...

The College's Mandate

Of significant concern to many of the College Councillors in considering the application was a particular section of the Community Standards contract which must be signed by both students and faculty. This section obliges students and faculty to refrain from practices that are "biblically condemned" such as "... sexual sins including ... homosexual behaviour ...". The motion made by Council reflects the majority belief that Trinity Western University's Community Standards contract discriminates on the basis of sexual orientation.

The important question faced by the Council in reviewing the program was whether the mandate of the College may include issues of discriminatory practices which were evident in the Community Standards contract. Section 4 of the Teaching Profession Act states "It is the object of the College to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members". The College is therefore directed by way of its mandate to consider the public interest when approving teacher education programs which lead to teacher certification for the public school system.

Public Policy and the Public Interest

The stated object of the College under the Teaching Profession Act obliges the Council to be primarily concerned with the integrity and the values of the public school system and the institutions and programs which will prepare graduates to teach in the public system. Therefore in reviewing a program application, the College must consider whether the institution offering the program discriminates against persons entitled to protection according to the fundamental values of our society. These values are embedded in the Charter of Rights and in human rights statutes enacted by Parliament and the British Columbia legislature. They represent the public interest referred to in Section 4 of the Teaching Profession Act.

Both the Canadian Human Rights Act and the B.C. Human Rights Act prohibit discrimination on the ground of sexual orientation. The Charter of Rights and the Human Rights Act express the values which represent the public interest. Labelling homosexual behaviour as sinful has the effect of excluding persons whose sexual orientation is gay or lesbian. The Council believes and is supported by law in the belief that sexual orientation is no more separable from a person than colour. Persons of homosexual orientation, like persons of colour, are entitled to protection and freedom from discrimination under the law.

The Professional Standards

In determining the standards for the profession, the Council must make decisions about suitable and appropriate preparation for teaching in the B.C. public school system.

Councillors also expressed concern that the particular world view held by Trinity Western University with reference to homosexual behaviour may have a detrimental effect in the learning environment of public schools. A teacher's ability to support all children regardless of race, colour, religion or sexual orientation within a respectful and nonjudgmental relationship is considered by the College to be essential to the practice of the profession.

ISSUES

Trinity Western University

[56] The petitioners argue that this case is about the liberty of Christian individuals to form an educational community based on their beliefs and not to suffer from any punitive measures or the withholding of public benefits on account of those beliefs. They stated the following to be the issues:

1. What is the appropriate standard of review to be applied by the Court to errors made by the BCCT in refusing TWU's application for a complete Teacher Education Program?
2. In finding that it would be contrary to the public interest to approve a Teacher Education Program at TWU did the BCCT err:
 - a) in its consideration of the statutory objects of TWU;
 - b) in its consideration of the Human Rights Act; or
 - c) by discriminating against students and graduates of TWU?
3. Did the BCCT exceed its jurisdiction under the Teaching Profession Act by considering material and issues which are irrelevant to its statutory mandate; failing to investigate clearly relevant material; or by acting to achieve purposes not mandated by the Teaching Profession Act?
4. Did the BCCT breach the rules of natural justice and procedural fairness by:
 - a) acting arbitrarily by making a decision based on no evidence;
 - b) acting so as to create a reasonable apprehension of bias; or

- c) excluding TWU from meaningful participation [sic] in the process by failing to disclose all of the material and criteria on which its decision was based?

5. Did the decision of the BCCT breach the Petitioners' fundamental rights and freedoms under the following sections of the Charter of Rights and Freedoms:

- a) s. 2(a) [freedom of religion];
- b) s. 2(b) [freedom of expression];
- c) s. 2(d) [freedom of association]; or
- d) s. 15 [equality under the law]?

6. What is the appropriate relief to be granted to TWU for errors made by the BCCT in refusing TWU's application for a complete Teacher Education Program?

British Columbia College of Teachers

[57] Counsel for the BCCT argued that the issue in these proceedings is whether the Council of the BCCT, in determining whether to approve TWU's teacher education program, may consider TWU's policy against homosexuals, and further, whether such a policy may produce teachers who would fail to support all children regardless of race, colour, religion, or sexual orientation.

[58] The BCCT says that it has a responsibility to ensure that the fundamental values of our society are served by teachers who enter the public school system and that they provide a supportive environment for all students.

British Columbia Civil Liberties Association

[59] The position of the BCCLA is set out in its brief which was presented at the hearing:

[T]he allegation that persons graduating from Trinity Western are more likely to discriminate against homosexuals is completely without foundation. There was no evidence to support this claim. The Council is, in effect, trying to become a regulator of the opinions of teachers in this Province. This is inappropriate in a free society.

Ironically, it is the Council who is guilty of discrimination which cannot be justified. The Council is unjustifiably discriminating against fundamentalist Christians.

[60] The BCCLA concludes its brief with the following comments:

It is respectfully submitted that the issue in this case is not whether homosexuality is right or wrong or whether one agrees with the Code of Conduct of Trinity Western University. It is about whether an agency of the state, namely the Council of the College of Teachers, may assume jurisdiction over matters which are not expressly provided for under the enactment which confers jurisdiction upon it. It is about whether individuals may come together, form a private religious educational institution such as Trinity Western University, and freely agree to its code of Conduct. It is about whether religious persons are free to associate and to express their views in Canadian society.

Catholic Civil Rights League

[61] The CCRL views the actions and arguments of the BCCT as serious threats to religious liberty. It says that at stake is the ability of those whose religious faith declares homosexuality to be immoral to govern their lives according to their religious beliefs, the ability to keep a job without being forced to recant their faith, and the ability to seek the

common good as they understand it, rather than as others understand it.

[62] The CCRL states that Roman Catholics are governed by the teaching that every sign of unjust discrimination in regard to homosexual persons must be avoided and that homosexual persons must be accepted with respect, compassion, and sensitivity. However, at the same time, Roman Catholic teaching is that under no circumstances can homosexual acts be approved. The CCRL argues that if the BCCT's ruling is upheld, this Court would in effect be saying that no Roman Catholic should be able to teach in a public school or hold similar positions of trust in British Columbia without recanting those articles of faith which conflict with the beliefs of the members of the Council of the BCCT.

JURISDICTION

INTRODUCTION

[63] TWU and the BCCT agree that the Council had jurisdiction to render its decision. However, Counsel for the BCCT concedes that a question of law arises as to the proper interpretation of the Teaching Profession Act, in particular whether the legislation entitles the Council to consider TWU's discriminatory policies.

[64] Beetz J. for the court in U.E.S., Local 298 v Bibeault, [1988] 2 SCR 1048, set out the method for determining whether an alleged error is jurisdictional or not (at pp.1088-89):

The formalistic analysis of the preliminary or collateral question theory is giving way to a pragmatic and functional analysis, hitherto associated with the concept of the patently unreasonable error. At first sight it may appear that the functional analysis applied to cases of patently unreasonable error is not suitable for cases in which an error is alleged in respect of a legislative provision limiting a tribunal's jurisdiction. The difference between these two types of error is clear: only a patently unreasonable error results in an excess of jurisdiction when the question at issue is within the tribunal's jurisdiction, whereas in the case of a legislative provision limiting the tribunal's jurisdiction, a simple error will result in a loss of jurisdiction. It is nevertheless true that the first step in the analysis necessary in the concept of a "patently unreasonable" error involves determining the jurisdiction of the administrative tribunal. At this stage, the Court examines not only the wording of the enactment conferring jurisdiction on the administrative tribunal, but the purpose of the statute creating the tribunal, the reason for its existence, the area of expertise of its members and the nature of the problem before the tribunal. At this initial stage a pragmatic or functional analysis is just as suited to a case in which an error is alleged in the interpretation of a provision limiting the administrative tribunal's jurisdiction: in a case where a patently unreasonable error is alleged on a question within the jurisdiction of the tribunal, as in a case where simple error is alleged regarding a provision limiting that jurisdiction, the first step involves determining the tribunal's jurisdiction.

[65] Any error made by the Council with respect to its jurisdiction will cause its resulting decision to be quashed: Bibeault at p.1086. This includes any error made by the Council in interpreting the legislation. If the Council's decision is based on an irrelevant consideration or if it should proceed from an improper purpose, it loses jurisdiction and its decision is a nullity.

[66] In Service Employees' International Union v. Nipawin District Staff Nurses Association, [1975] 1 SCR 382, Dickson J. for the court said (at p.389):

A tribunal may, on the one hand, have jurisdiction in the narrow sense of authority to enter upon an inquiry but, in the course of that inquiry, do something which takes the exercise of its powers outside the protection of the privative or preclusive clause. Examples of this type of

error would include acting in bad faith, basing the decision on extraneous matters, failing to take relevant facts into account, breaching the provisions of natural justice or misinterpreting provisions of the Act so as to embark on an inquiry or answer a question not remitted to it.

[67] The Council must not only have the jurisdiction at law to enter into an inquiry and to render its decision; there must also be a factual basis for that decision. Thus, if the decision is patently unreasonable, given the facts before the Council, then the Council loses jurisdiction and its decision will be quashed. Further, if the decision is based on no evidence at all, then the Council has no jurisdiction.

[68] In Dairy Producers Cooperative Ltd. v. Teamsters, Dairy and Produce Workers, Local 834 (1993), 16 Admin L.R. (2d) 77 (Sask C.A.), Sherstobitoff J.A., for the court, said (at para.13):

Whether the Board was entitled to that view, as the judge said it was, depends on whether the view rested on a patently unreasonable premise, or to be more precise, whether there was any evidence upon which the Board could reach the conclusion that it reached.

Sherstobitoff J.A. concluded (at para.15) that the board in question had based its decision on a premise which could not withstand a rational analysis.

PUBLIC INTEREST

[69] The BCCT claims to have the authority to consider the public interest from s.4 of the Teaching Profession Act:

4. It is the object of the college to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership and, consistent with that object, to encourage the professional interest of its members in those matters.

Trinity Western University's Position

[70] The petitioners say that the reference to the public interest in this provision must be qualified by a pragmatic and functional analysis of the purposes behind the Act, the nature of applications for teacher education programs, and the expertise of Council members. 15 of the 20 members of the Council are elected from the members of the BCCT. Presumably, these Council members have expertise in teaching children in British Columbia. However, the emphasis on considering teacher education program applications is on the governing legislation, bylaws, and policies of the BCCT.

[71] It is also important to note that although the legislature has given the Council the authority to look to the public interest in making its decisions, this does not provide the Council with unqualified discretion. The public interest must be determined based on the context of the statute: Lindsay v. Manitoba (Motor Transport Board) (1989), 62 DLR (4th) 615 (ManCA) at p.626:

The words "public interest" are not defined in the new Act, but that does not make their meaning "a matter of policy entirely within [the Board's] jurisdiction". The meaning of those words, neither precise nor unambiguous in themselves, must be construed in the context of the statute in which they are found, for it is Parliament and not the Board which establishes the "policy", or the object or the purpose, of the legislation.

[72] The petitioners say that the BCCT has mischaracterized and aggrandized its role. It argues that the BCCT was not created and given its powers to make sweeping policy decisions for what it believes to be the general good of society. Rather, it was established as a self-regulating professional body to certify and discipline teachers and the teaching profession in British

Columbia. Ancillary to this role is its ability to approve teacher education programs which meet the academic qualifications necessary to prepare teachers for teaching in the public school system. It is common ground, say the petitioners, that TWU meets these requirements and that graduates of TWU's education program are, in all regards, qualified and fit to teach in the public schools of the province.

[73] The petitioners argue that section 4 of the Act requires the BCCT to establish standards that ensure teachers certified in British Columbia are properly qualified, academically and professionally, to teach in the public schools but that that does not permit the BCCT to weigh the personal religious beliefs of applicants for certification to identify those that do not agree with specific points of view held by the Council of the BCCT. Further, that the personal religious beliefs of individual applicants are irrelevant to their qualifications and they are equally irrelevant to the certification of a teacher education program.

[74] TWU further argues that where a statutory body seeks to achieve some purpose external to the purposes contemplated by its constitutive legislation, it abuses the discretion granted to it: *Roncarelli v. Duplessis*, [1959] SCR 121, at p.140 and where this body denies an application in order to demonstrate disapproval of a particular belief, it is acting on ulterior motives which are outside of its jurisdiction which constitutes an error and the defect in the decision goes to the body's jurisdiction making its decision a nullity: *Prince George (City) v. Payne*, [1978] 1 SCR 458.

British Columbia College of Teachers' Position

[75] The BCCT takes the position that in considering the public interest under s.4 of the Act, it may take into consideration the prohibition of discrimination against homosexuals as contained in the Canadian Charter of Rights and Freedoms and the Human Rights Code, RSBC 1996, c210.

[76] The BCCT argues that two analogies are relevant: the refusal to uphold a racist restrictive covenant on a property title in *Re Drummond Wren*, [1945] 4 DLR 674; and a refusal to give tax-exempt status to private religious schools with racist admissions policies in *Bob Jones University v. US*, 461 US 574 (1983). Further, that TWU is free to deprive anyone of the opportunity to study at TWU who does not share the belief that homosexuality is a sin and to grant education degrees that will be recognized as such throughout Canada. However, the BCCT says that it is a huge step from the purely private matter of a recognized degree to the public dimension acquired if that degree leads to certification by the BCCT.

[77] It is particularly important, says the BCCT, that teachers be tolerant of homosexuals. *Ross v. New Brunswick School District No. 15*, [1996] 1 SCR 825 at para.42-4 is quoted:

A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through the educational medium. ...

Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions. ...

By their conduct, teachers as "medium" must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system.

Analysis

[78] Counsel for the BCCT argued as follows:
We have the public school system and the independent school system, the latter comprised of private schools, Jewish schools, Catholic schools, and Christian schools, and others.

TWU's graduates are eligible to teach in these schools; indeed they are eminently suitable to teach in the Christian schools.

But are they suitable to be teachers in the public schools? This is a matter for the College.

[79] The role of the BCCT is not only to set standards for teachers in the public schools, but to set standards for all professional teachers in the province. If the BCCT accepts TWU graduates to be "eminently suitable to teach in the Christian schools", then I believe this implies that the BCCT should also accept that TWU graduates should be certified to teach in those schools. Surely, if they can be certified to teach in Christian schools, they should be qualified to teach in public schools.

[80] Further, we should look at the fundamental values of our society. Freedom of religion means that society must take a neutral stance with respect to religions. This requirement of neutrality does not mean that the members of society may not have differing religious beliefs for this would obliterate the freedom. Instead, members of society are required to be tolerant - to respect others and their views. Also, our society prohibits discrimination on the basis of sexual orientation. This means that each member of society must be tolerant of another person's sexual orientation and respectful of that other person regardless of the beliefs held. What is important then is to look to determine if TWU's graduates are adhering to these values.

[81] The objects provision of the Teaching Profession Act is plainly written and clear. The BCCT has two purposes:

1. To establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership; and
2. Consistent with the primary purpose, to encourage the professional interest of its members.

[82] The primary object of the BCCT is to set standards for teachers. It does not set all standards for teachers - for example, it does not have as its purpose the setting of standards of dress, or hair length, or driving skills. It sets standards for teachers' education, professional responsibility, and competence. However, these standards are not to be set in a vacuum, but are to be set having regard to the public interest.

[83] In Payne, the issue was (at p.459) "whether a municipal council is empowered to refuse a business licence on the basis that it seeks to protect the community's moral welfare." The Supreme Court of Canada unanimously affirmed the decision of the British Columbia Court of Appeal that the council did not have this power (at p.463):

[I]t is not part of a Court's task to determine the wisdom of Council's decision, assuming a power to deny the licence inhered in the Council. The Court's sole concern is whether the Council acted within the four corners of its jurisdiction. The discretion contained in s.455, wide as it is, must be exercised judicially. It is not a judicial exercise of discretion to rest decision upon an extraneous ground.

[84] It is obvious that the reference to the public interest does not confer unlimited authority on the BCCT to act, nor does it allow the BCCT to take into account all aspects of public policy which it believes should be promoted. Rather, those aspects of the public interest which bear on standards for the education, professional responsibility, and competence of teachers are within the jurisdiction of the BCCT. For example, in determining the standards for competence the BCCT would be entitled to consider the pluralistic nature of our society. This the BCCT appears to have done in developing Policy P5.C.01, the criteria for a teacher education program:

3.1 Have content which provides a base of knowledge of sufficient breadth and depth to prepare the candidate for an appropriate teaching assignment in the school system.

...

3.5 Have content which recognizes the diverse nature of our society and which addresses throughout the program philosophical, ethical and societal concerns ...

[85] Therefore, if an applicant has met all the standards set by the BCCT in the public interest in regard to education, professional responsibility, and competence, can the BCCT nevertheless refuse to certify the teacher on the basis of certain beliefs held by that teacher? That is to say, can the BCCT refuse to allow a qualified teacher to teach in British Columbia because of a religious belief that homosexual behaviour is a sin? I believe the answer is no.

CONSIDERING IRRELEVANT FACTORS

Trinity Western University's Position

[86] TWU submits that for a statutory tribunal to exercise its decision-making power within its jurisdiction, it must not take into account irrelevant matters, and cites the decision of Lord Greene, MR, in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, [1947] 2 All ER 680 (CA) at pp.682-3:

The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. ... It is true the discretion must be exercised reasonably. What does that mean? ... It is frequently used as a general description of things that must not be done. ... He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably".

[87] TWU submits that the BCCT exceeded its jurisdiction in considering the Community Standards and personal beliefs of TWU graduates on the ground that these are irrelevant. It argues that the relevant considerations relate to the competence of TWU graduates to teach.

British Columbia College of Teachers' Position

[88] The BCCT takes the position that it is within its mandate to establish standards for teachers which involve exposure to "secular values". That the Council does not need to follow its own policies and criteria which it says can be treated as a helpful guide for applicants and are not intended to fetter the Council's discretion.

[89] The BCCT, it says, is properly concerned with the integrity of the public school system and with the institutions and programs which will prepare graduates to teach in the public school system. The policy criteria specify that a university's programs must take place in an "appropriate institutional setting", that its selection and admission policy should recognize "suitability for entrance into the profession of teaching", and that its programs must have content "which recognizes the diverse nature of society". All of these criteria, says the BCCT, bear on TWU's policy with regard to homosexuality.

[90] In considering any application for approval of a program of teacher education, the BCCT takes the position that it may

consider whether the program will produce teachers who are academically qualified, who are possessed of a sense of professional responsibility, who are competent, and who will be perceived as representing society's fundamental values and will provide a supportive environment for all students. In doing so, the BCCT says that the Council may consider whether the institution promotes discrimination against persons entitled to protection in accordance with the fundamental values of this society.

Analysis

[91] I accept TWU's statement of the law that irrelevant matters cannot be considered by the Council. I do not accept that TWU's Community Standards are irrelevant considerations. The BCCT is entitled to expect appropriate conduct of teachers. To that end, the Council would be entitled to look at the conduct of TWU graduates under the present program and, if there is inappropriate conduct, to look to see whether that inappropriate conduct is related to TWU's Community Standards. What has happened here is that the Council acted without any evidence that the Community Standards of TWU have led or could lead to inappropriate conduct by teachers who graduate from TWU.

DECIDING WITHOUT ANY EVIDENCE Trinity Western University's Position

[92] TWU argues that Council's decision was made based on no evidence, and is therefore unreasonable and must be set aside. That without evidence a tribunal cannot have a rational basis for its decision and such a decision is therefore patently unreasonable: Dairy Producers, supra; Hicks v. Langley Memorial Hospital (1992), 16 Admin LR (2d) 38 (BCSC) at para.73.

British Columbia College of Teachers' Position

[93] Counsel for the BCCT takes the position that there was evidence on which the Council could base its decision: it had before it the Community Standards and other statements of institutional values of TWU. The question, counsel argues, is whether graduates of TWU would be suitable to teach in the public schools. That given the documents before it, the BCCT was entitled to anticipate that as the students at TWU believe homosexuality to be sinful to allow them to teach is "the gateway to perdition". This leads to further assumptions that counsel submits are reasonable:

It is not unreasonable to conclude that teachers who believe that homosexuality is sinful and opens the gateway to perdition may not be perceived as upholding the fundamental value of protecting all students from discrimination and would not provide a supportive environment for all students.

...

The Council was entitled to anticipate that a teacher holding the beliefs set out in the contracts would not ensure that the classroom and school environment is "discrimination-free".

Analysis

[94] Briefly stated, the position of the BCCT is that it is entitled to conclude that graduates of TWU will be intolerant because they must promise not to engage in homosexual behaviour while at TWU, and this requirement is couched in language which calls such behaviour "sinful".

[95] Such a premise is inherently flawed because it requires many unfounded assumptions. The situation is not one in which the Council was compelled to reach its decision by conjecture. First, there was evidence on the issue of the conduct of TWU graduates before the Council; and second, there could have been more evidence had the Council sought to obtain it.

[96] The evidence before the Council on the conduct of TWU graduates contradicts the conclusion that they are intolerant. The Program Approval Team compiled a lengthy report on TWU's proposed program, including discussions on how TWU's values

would affect its students' abilities to teach in a pluralistic society. That Team decided that TWU graduates would be competent teachers. Apart from this, the Council had on its reconsideration of the matter the information supplied to it by TWU in response to the initial rejection. The following was before the Council:

THE SUITABILITY AND PREPAREDNESS OF GRADUATES TO TEACH IN THE DIVERSE AND COMPLEX SOCIAL ENVIRONMENTS FOUND IN THE PUBLIC SCHOOL SYSTEM

We want to make several points about our track record that indicate that our graduates are suitably prepared for teaching in public settings:

* During the 1995-96 school year 125 of our education students were placed as volunteers in 27 public schools. During the past few years, we consistently have had more requests for placements from public school teachers and principals than we are able to supply. Public school teachers who work with our preservice teachers confirm that they fit well into public school situations.

* Except for transfer students, our students currently already take all but one year of their teacher education program at Trinity Western University, and prospective elementary teachers remain on our campus for all of their final year except for two post-practicum summer courses. Our students generally do well in the Professional Development Program, and Simon Fraser's faculty associates have mentioned time and again that our students are well prepared to enter EDUC 401/402.

* Many of our graduates serve with distinction in school districts throughout the province. Until the scarcity of long-term teaching positions of the past two years, about 70% of our graduates obtained positions in public schools. When they have left employment, it has been, as far as we know, to pursue graduate studies, to serve in positions in other parts of Canada or the world, or to take leave to care for children at home.

* Our education graduates have not limited their employment to middle class neighbourhood public schools. A significant proportion have chosen to teach in multicultural situations, in First Nations schools, in prison settings, and in a diversity of positions throughout the world. Our graduates have volunteered and been successful in experiences ranging from teaching in one of the very first schools in South Africa that set out to break apartheid barriers to teaching in some difficult special needs situations in local schools. Trinity Western education students have an outstanding record of volunteer involvement in First Nations settings, in countries formerly dominated by the Soviet Union, and in Third World settings. During the last four years, TWU students have volunteered with the Babine Lake First Nations Band in northern British Columbia. Last month the band offered positions to two of our students to work with the band on a long-term basis.

[97] Other evidence was available. Since large numbers of TWU graduates are teaching in the public school system, it would have been possible to determine if there has been any incidents of intolerance.

[98] It is apparent that the Council failed to consider the evidence which was before it, for had it done so it could not have reached the decision it did. Therefore, I find the decision to have been made without any reasonable foundation and must therefore be quashed.

OTHER ISSUES

[99] Having reached the decision that the Council was without jurisdiction, it is unnecessary to deal with the other issues raised.

REMEDY

[100] Council stated as its reason for denying the application of TWU That it believed "that the proposed program follows discriminatory practices which are contrary to the public interest and public policy". For the reasons I have given, Council was without jurisdiction to make its decision on this ground.

[101] I am therefore remitting the matter back to the Council and directing that it approve TWU's Teacher Education Program for accreditation purposes subject to the conditions recommended by the Teacher Education Programs Committee.

"W.H. Davies, J."

W.H. Davies, J.